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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,437	12/11/2003	Ghulam Nabi Qazi	3097-4008US1	2290
27123	7590	11/19/2004	EXAMINER	
MORGAN & FINNEGAN, L.L.P.			HENLEY III, RAYMOND J	
3 WORLD FINANCIAL CENTER			ART UNIT	
NEW YORK, NY 10281-2101			PAPER NUMBER	
			1614	

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/735,437

Applicant(s)

OAZI ET AL.

Examiner

Raymond J Henley III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4-6,8-19 and 21 is/are allowed.
- 6) ☒ Claim(s) 2, 3, 7 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

CLAIMS 1-21 ARE PRESENTED FOR EXAMINATION

Applicants' Amendment and the declaration under 37 C.F.R. 1.132 filed October 5, 2004 have been received and entered into the application.

Accordingly, the specification at page 1 and claims 1-21 have been amended and claims 22-34 have been canceled.

In light of the amendments and declaration, the rejections of claims 22 and 23 under 35 U.S.C. §112, second paragraph; claims 1-3, 19 and 20 under 35 U.S.C. §102; claims 4 and 21 under 35 U.S.C. §103; and claims 22-34 under the judicially created doctrine of obviousness-type double patenting, as set forth in the previous Office action dated June 8, 2004, are withdrawn.

Claim Rejection - 35 USC § 112, Second Paragraph

Claims 2, 3, 7 and 20 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims remain rejected because in the Markush group, the phrase "consisting essentially of" does not particularly point out the metes and bounds of the subject matter for which applicants seek patent protection.

It is improper to use the term "comprising" instead of "consisting of." *Ex parte Dotter*, 12 USPQ 382 (Bd. App. 1931). Further, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." See, e.g., *PPG Industries v. Guardian Industries*, 156 F.3d 1351,

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1354, 48 USPQ2d 1351, 1355 (Fed. Cir. 1998). Here, the present specification and claims have been reviewed, but the Examiner finds no clear indication of what constitutes the basic and novel characteristics of the claimed invention. Thus, because claims 2, 3, 7 and 20 effectively include a Markush group in which the term "comprising" is recited, the claims are deemed to remain properly rejected.

It is suggested that "consisting essentially of" be changed to ---consisting of--- in order to overcome the rejection.

Allowable Subject Matter

Claims 1, 4-6, 8-19 and 21 are in condition for allowance.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J Henley III whose telephone number is 571-272-0575. The examiner can normally be reached on M-F, 8:30 am to 4:00 pm Eastern Time.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Raymond J Henley III
Primary Examiner
Art Unit 1614

November 17, 2004